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January 8, 2001

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
Portals II - 12th Street Lobby
Filing Counter - TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

Re: Biltmore Forest, North Carolina
Channel 243A
Motion to Strike

Dear Ms. Salas:

Transmitted herewith, on behalf of Orion Communications Limited, is an original and fourteen copies of its Motion to Strike. Please contact the undersigned in the event the Commission has any questions with respect to this filing.

Sincerely,



Lee J. Peltzman
Counsel for
ORION COMMUNICATIONS LIMITED

Enclosure

ORIGINAL

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

| | | |
|--|---|-----------------------------|
| In re Applications of |) | MM Docket No. <u>88-577</u> |
| |) | |
| LIBERTY PRODUCTIONS, |) | File No. BPH-870831MI |
| A LIMITED PARTNERSHIP |) | |
| |) | |
| WILLSYR COMMUNICATIONS |) | File No. BPH-807831MJ |
| LIMITED PARTNERSHIP |) | |
| |) | |
| BILTMORE FOREST |) | File No. BPH-870831MK |
| BROADCASTING FM, INC. |) | |
| |) | |
| SKYLAND BROADCASTING |) | File No. BPH-870831ML |
| COMPANY |) | |
| |) | |
| ORION COMMUNICATIONS |) | File No. BPH-870901ME |
| LIMITED |) | |
| |) | |
| For a Construction Permit for a New FM |) | |
| Broadcast Station on Channel 243A |) | |
| At Biltmore Forest, North Carolina |) | |

To: The Commission

MOTION TO STRIKE

Orion Communications Limited ("Orion"), by its attorneys, moves to strike portions of the "Consolidated Reply to Opposition to Joint Request for Approval of Settlement" filed by Liberty Productions, a Limited Partnership ("Liberty") on December 11, 2000 ("Liberty Consolidated Reply") and "Consolidated Reply to Oppositions" filed by Biltmore Forest Broadcasting FM, Inc. ("BFB") on December 11, 2000 ("BFB Consolidated Reply"). In support of its position, Orion submits the following:

The relevant facts are as follows. BFB and Liberty filed a Joint Request for Approval of Settlement ("Joint Request"). Orion had the gall to oppose in part the Joint Request as did other parties in this proceeding, Willsyr Communications Limited Partnership and the Commission's

Mass Media Bureau. Orion opposed the Joint Request on legal grounds. As such, Liberty and BFB were free to disagree with Orion's legal analysis and, not surprisingly, they did so disagree. However, neither Liberty nor BFB was free to engage in character assassination. Despite this, both applicants went out of their way to make improper and, for that matter, unproven defamatory attacks against Orion.

Liberty at page 3 of its Consolidated Reply states that Orion's Opposition "should be recognized for what it is, a thinly veiled attempt to prolong its illegal, pirate operation on the Biltmore Forest FM channel . . ." Not only is this character attack unsubstantiated, it is absolutely irrelevant to the issue which Liberty attempts to discuss.

The issue of whether the proposed Liberty-BFB Settlement Agreement complies with the Commission's policies was the only issue considered by those parties opposing the settlement. Orion assumed, perhaps incorrectly, that Liberty would limit itself to consideration of that issue as well. Instead, Liberty has leveled an unwarranted personal attack on Orion's character. Moreover, not only is Liberty's character attack irrelevant to the issue under review by the Commission, but Liberty does not even attempt to cite any evidence to support its assertions. The facts are that Liberty took part in a joint interim operation of the Biltmore Forest station which was found to be illegal by the Court.¹ Orion's interim operation of Station WZLS, on the other hand, was held to be legitimate by the Court, and, subsequently, by the Commission.² No decision-maker has ever found Orion guilty of engaging in anything illegal, much less a "pirate operation." Liberty's language is an embarrassment and, consequently, should be stricken. See Patients Plus, Inc. v. Long Distance Telecommunications Service, Inc., 12 FCC Rcd 13258, 13277

¹ Orion Communications, Ltd. v. FCC, 131 F.2d 176 (D.C. Cir. 1997), cert. denied, 119 S. Ct. 62 (1998).

² See Liberty Productions, a Limited Partnership, 14 FCC Rcd 7637, 7638 (1999).

(1997). Likewise, its statement at the bottom of paragraph 11 that “while Willsyr hopes merely for a new settlement window, Orion’s goal is to delay the resolution of the proceeding and prolong its illegal operation” should also be stricken as irrelevant to the issues and an unproven character attack. Similarly, the first sentence of paragraph 12 of the Liberty diatribe that “in arguing that the proposed settlement will not result in expedited services to the public, Orion cites its own illegal, pirate operation on the Biltmore Forest FM channel . . .” should also be stricken. Finally, Liberty’s speculative assumption at the beginning of paragraph 14 that “Orion’s challenges to the provision of proposed Consulting Agreement reflect clearly that its sole intention is to achieve delay at any cost” should additionally be stricken.

Orion’s arguments stand or fell based on their legal substance. Thus, Orion’s intentions are irrelevant to the validity of its assertions. Moreover, in its effort to analyze Orion’s collective psyche, Liberty clearly misses the point. In fact, its assertion as to Orion’s objectives makes no sense. Orion has not taken part in a fifteen (15) year proceeding at enormous financial and emotional cost so that it can scrape by with an interim broadcast operation. Orion continues to broadcast based on its belief, perhaps naively held, that justice will prevail and that, eventually, it will be awarded a license to be a permanent broadcaster in its home town. Liberty’s statements project more about its own character than about Orion’s.

Similarly, the BFB statement at page 8 of the BFB Consolidated Reply attacking Orion’s interim operation as a “continuing affront to justice and fair play” should also be stricken. Again, there is no basis for BFB’s defamatory statement other than its apparent unbridled dislike of any and all who disagree with its legal conclusions.

What Liberty and BFB demonstrate in this case is an increasing willingness to engage in partisan justice. While all of the remaining applicants have attacked Orion at one time or

another, the Commission has yet to conclude that Orion has engaged in any improper behavior. This has not stopped Liberty and BFB from continuing to attack Orion and its principals as miscreants of the worst kind. Again, this tendency to believe the worst about their adversary's motives only demonstrates their own lack of character.

Orion has taken part in this Commission proceeding for well over a decade and, throughout this case, it has given as good as it has received. Yet, in Commission proceedings, like war, there are certain rules to be followed. Parties taking part in legal discussions regarding the validity or invalidity of a settlement agreement have no business attacking the character of any and all who disagree with their legal conclusions. Such behavior only demonstrates a lack of civility, yet, because such parties lack the maturity to be embarrassed, it is imperative that the Commission step in to strike such personal attacks.

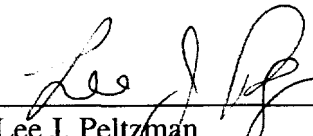
Accordingly, in view of the above, Orion respectfully submits that the Commission should strike the statements discussed above as being totally inappropriate to this proceeding.

Respectfully submitted,

ORION COMMUNICATIONS LIMITED

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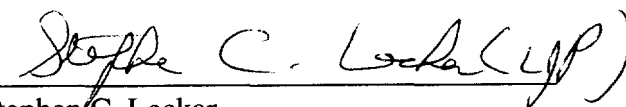
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January 8, 2001

CERTIFICATE OF SERVICE

I, Dawn L. Hughes, secretary in the law offices of Shainis & Peltzman, Chartered, do hereby certify that on this 8th day of January, 2001, copies of the foregoing were sent (except where noted) via first-class United States Mail, postage pre-paid, to the following persons:

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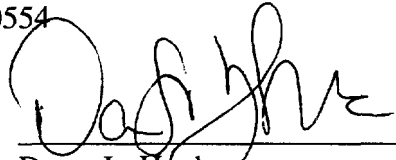
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*Via Hand Delivery